



Informal Hearing Determination

Company: Ambrose Branch Coal Company, Inc. **Permit No.:** 1500883
Subject: Notice of Violation No. DLH0010038
Conference: October 7, 2015 @ 11:30 AM **Location:** Mine Site
Participants: Paul Ison- Ambrose Branch permittee , Ken Stanley- Contractor

On October 7, 2015, an informal hearing was held at the mine site of Ambrose Branch Coal Company, Inc. permit number 1500883 in reference to the fact of violation for Notice of Violation DLH0010038. Representing Ambrose Branch Coal Co., Inc. were Mr. Paul Ison and Mr. Kenneth Stanley. The hearings officer was Harve Mooney. Mr. Ison and Mr. Stanley were afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

Summary of Informal Hearing

Notice of Violation No. DLH0010038 was issued to the operator on September 1, 2015 for the operator's failure to conduct reclamation operations in a timely and contemporaneous manner. The violation noted three areas where reclamation (specifically backfilling and grading) was not current. Remedial measures were to bring backfill and regrading to a current status in accordance with the approved detailed plans and all applicable regulations. The hearing included an examination of all of the areas in question.

The permittee, Mr. Paul Ison, began by stating that he felt they were in compliance with the regulations. He stated that there was additional mining possible in the areas where the alleged violation was written. He noted that he had intended to auger in those areas before he would initiate the backfilling in the areas. He stated he had been told to keep the reclamation current and he had done so. Mr. Ison stated that he had equipment on the site, but due to equipment failure, he was unable to work when the Inspector came to do his inspection.

Mr. Kenneth Stanley noted that the company had had a bulldozer and an excavator working on the site. They had to move the excavator to another site to remove a basin required by MSHA. Unfortunately the bulldozer broke down, and the morning of the inspection, he was going to get a replacement part for the bulldozer, so they could work. Mr. Stanley also noted that because of the Va. Division of Mines (DM), they could not start work because of DM requirements on the date of the red zone inspection.

Mr. Ison stated that it was his understanding that as long as they controlled the drainage and worked on the backfilling and grading they would be in compliance on the site. He noted areas where he had done work on the site. He stated that they may have not been working the date of the violation because of equipment issues, but they had done what they thought was expected.

Mr. Ison noted that they were close to the edge of the areas that were bonded. He also stated that they were working on a revision to move bond to un-bonded areas so that they could mine those areas. This would provide the spoil necessary for them to eliminate the walls specified in the notice of violation. Mr. Ison closed by saying that due to the information provided, he felt that the violation should be vacated as they were doing what they had been instructed to do.

Informal Hearing Recommendation

A review of the inspection narrative associated with Notice of Violation DLH0010038 noted that a Notice of Violation DLH0010038 (one violation) was issued to the operator for being in violation of Section 4 VAC 25-130-816.100 of the VA Coal Surface Mining Reclamation Regulations. This section requires that all surface areas disturbed by surface mining activities be reclaimed as contemporaneously as practicable and sets forth specific time frames for completing the work, unless additional time is requested in their permit application and granted by the Division. In this case, the permittee's approved plans state that Ambrose Branch will perform contemporaneous reclamation in accordance with their time and distance limitations outlined in Section 13.00 of their permit plans. That section sets the maximum length of any exposed highwall at 1,500 feet and a time limit of no more than 60 days to complete reclamation of disturbed areas.

The permit was placed in temporary cessation on July 31, 2014. The temporary cessation expired on January 27, 2015. At this point, the permittee had two options. He could re-activate the site by re-initializing mining operations or extending the temporary cessation. The permittee asserts that he was of the opinion that as long as he was making progress in doing the reclamation of the area, he would be deemed to be in compliance. He noted that while they may not have been working the day the inspector came, they were making progress doing reclamation.

The standard for this violation is addressed within the **Virginia Coal Surface Mining Reclamation Regulations**, which addresses the performance standard for contemporaneous reclamation. Specifically, Section 4 VAC 25-130-816.100 states,

Timing of backfilling and grading.

(1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 4VAC25-130-780.18(b)(3), that additional time is necessary.

An approved temporary cessation essentially stops the time clock for backfilling and regrading, and is granted when all standards, including contemporaneous reclamation are current. However, the temporary cessation expired on January 17, 2015, and the permittee had a responsibility to either extend the temporary cessation, or to assure that the reclamation of the site was current. Sixty days after the expiration of the temporary cessation, the permittee was in violation of the contemporary reclamation standard, and subject to enforcement action under Section 4 VAC 25-130-816.100 (b) (1) of the Virginia Coal Surface Mining Reclamation Regulations.

It is unfortunate that the permittee had equipment issues, but there are no provisions to allow a delay in the reclamation due to equipment failure. It was also noted that the area proposed to be augured was close to the permit edge, and any auguring could be off the approved permit.

Based on the findings of this hearing, it is this hearings officer opinion that this violation was properly issued, and it is recommended that the violation be affirmed.

Informal Hearings Officer: Harve A Mooney Date: 10/21/16